IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5854 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KANTIJI ABHRAJ THAKORE

Versus

ASSISTANT DIRECTOR OF AGRICULTURE (QUALITY CONTROL)

Appearance:

MR GK RATHOD for Petitioner

Shri I.M.PANDYA, A.G.P. for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 14/06/2001

C.A.V. JUDGEMENT

1. The petitioner has challenged the Award dated 15.10.1999 of the Labour Court, Ahmedabad, whereby the claim of the petitioner was partly allowed. Relief for reinstatement of the petitioner with full backwages and

consequential benefits was rejected. Only a sum of Rs.2500/- was awarded as cost to the petitioner.

2. The facts giving rise to this petition are as under :

The petitioner was employed by the respondent as daily-wager driver with effect from 5.8.1991 to 20.12.1993. It was alleged that the petitioner's service was terminated orally by the respondent on 22.12.1993 without following due procedure of law. The said oral termination was challenged before the Labour Court, but the same was rejected on 15.10.1999. The case of the petitioner is that he has completed 240 days of continuous service with the respondent and as such his case is covered by the provision of Section 25(F)(G) & (H) of the Industrial Disputes Act. Violation of Section 25(H) has been alleged by the petitioner and it has been pleaded that instead of observing that there was violation of Section 25(H) of the I.D.Act the Labour Court committed error in not granting reinstatement to the petitioner.

3. In the counter Affidavit the stand of the respondent is that the petitioner was employed as daily wage driver and there was no requirement of continuous service nor there was any permanent sanctioned post for driver. Since the petitioner was found surplus daily-wager hence his services were not continued and the same came to an end on 22.12.1993. It is also stated that the duty hours of the petitioner are not fixed and he was called as and when the work demanded his services. The petitioner was driving metador vehicle No.1046 but the said vehicle is not in operation hence his service came to an end. It is also stated that in view of Government Resolution dated 22.1.1999 and in view of economic measures adopted by the Government the practice of giving appointment to daily-wager as such has been curtailed. Further since there was no work on the post of driver hence the same could not be offered to the petitioner. It is also pleaded that the petitioner has not completed 240 days of service hence there is no violation of Section 25(F) of the I.D. Act. Another stand is that the respondent is not an industry hence the provisions of the I.D. Act did not apply nor the law of retrenchment can be made applicable to daily-wager.

4. In the additional counter Affidavit the stand of the respondent is that Metador No.GJG 1046 is completely out of order and is required to be scrapped. A proposal for the same was submitted to the State Government and as such no appointment to the post of driver was made for

plying Metador No.GJG 1046. One Jeep No.GJ-9-G-33 was obtained from Modasa Division on Loan on a temporary arrangement basis. The said Jeep is not to be kept permanently in the office of the respondent hence no permanent appointment has been made. One Chandrakant M. Mule, a retired AMTS driver was engaged for plying the said Jeep. At present he is not working with the respondent. For the last one month one Laljibhai Natvarbhai Thakor is engaged for plying the said Jeep, but such work is given on daily-wage basis and engagement of driver is made on the basis of need of work.

5. Having heard the learned Counsel, who argued on behalf of Shri G.K.Rathod, and Shri I.M.Pandya, learned A.G.P., I am of the opinion that the petition has no merit.

6. This court in exercise of jurisdiction under Article 226 or 227 of the Constitution of India will not sit in Appeal over the Judgment of the Labour Court. The Labour Court on the first point, namely, violation of section 25(F) has observed from the material on record that the petitioner was appointed by the respondent on 5.8.1991 as daily-wage driver. Various documents were referred by the Labour Court so also the oral evidence and ultimately it came to the conclusion that the petitioner was not getting monthly salary but he was getting Rs.40/- per day as daily-wager. It was also found by the Labour Court that the petitioner was not working on monthly salary of Rs.625/-. The Labour Court further found that the petitioner worked only for 230 days during the period from 1991 to 1993. There is thus categorical finding of the Labour Court that the petitioner had not worked for 240 days in the Institution. In face of this clear finding recorded by the Tribunal I am unable to accept the contention that in view of pronouncement of the Rajasthan High Court in EXECUTIVE ENGINEER v/s. MANOJ KUMAR, reported in 2000 LAB.I.C. 1178 for computing 240 days only actual working days are not to be taken into account, but to mean those days on which the workmen physicaly attended and worked,but must necessarily comprehend all those days during which he was in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders, etc. This case is distinguishable, because in the case before me the facts are that the petitioner was engaged as daily-wager as and when work required and not that he was engaged as continuous daily-wager. Consequently this ruling cannot be applied to the facts of the case before me. I, therefore, do not

find any illegality in the findings of the Labour Court that the provisions of Section 25(F) of the I.D.Act are not violated because the petitioner worked only for 230 days.

7. Similarly the provisions of Section 25(G) are also not violated.

8. So far as violation of Section 25(H) is concerned, learned Counsel for the petitioner argued that the findings of the Labour Court on this point are erroneous. It was further contended that for considering the violation of Section 25(H) of the I.D.Act there is no requirement that the workmen should have completed 240 days for which reliance was placed on the case of RAJKOT MUNICIPAL CORPORATION v/s. KISHOR GOVIND, reported in 1996 (1) GLH 84. My attention was drawn to the observation of the Labour Court in the award where it is mentioned that... "considering the aforesaid contention and statement of the Institution the provisions of Section 25(H) of the I.D. Act are violated, but considering the fact that the car/vehicle which was driven by the workman (second party) is presently not available and if he is reinstated to his original post on the establishment, in that case the other workman is required to be relieved and/or discharged and another new dispute will arise. Thus, considering the said aspect in mind, I do not think it expedient to reinstate the concerned workman to his original position". The Labour Court observed that the witnesses examined by the department admitted in cross examination that new driver has been appointed, but before appointing the said new driver the workman was not called upon to resume duties. It seems that in cross examination in Ex.48 witness did not disclose correct facts. Further cross examination should have been conducted. However, in the additional Affidavit filed in this petition it has been clarified that Metador No.GJG 1046 is completely out of order and is required to be scrapped and a proposal to that effect has been submitted to the Government. It is thus clear that the Metador is totally out of order. As a measure of temporary arrangement one Jeep No.GJ-9-G-33 has been taken on loan from Modasa Division. This Jeep is not permanently required nor it has been permanently supplied to the respondent, since it was taken on loan no permanent driver for the jeep was appointed. Initially a retired AMTS driver Chandrakant M. Mule was engaged on daily-wage basis for plying the said jeep. Thereafter one Laljibhai Natvarbhai was engaged for plying the said jeep and the work is given on temporary basis and that too on the basis of need of work. Consequently it cannot

be said that a new regular driver has been appointed either as daily-wager or on permanent basis and that too for the vehicle which is under the control of the respondent. In these circumstances there is no violation of Section 25(H) of the I.D. Act. The reasoning of the Labour Court may not be correct, but ultimately it is found that there is no violation of Section 25(H) of the I.D.Act.

9. No other point was pressed.

10. In the result I do not find any merit in the petition which is hereby dismissed with no order as to costs.

sd/-

Date : June 14, 2001 (D. C. Srivastava, J.)

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